

Department of the Treasury
Internal Revenue Service

2 Cupania Circle
Monterey Park, CA 91755-7431
[REDACTED]

Western Area (TE/GE)

Date: FEB 03 2000

Employer Identification Number:
[REDACTED]

DLN:
[REDACTED]

Person to Contact:
[REDACTED]

Telephone Number:
[REDACTED]

Fax Number:
[REDACTED]

CERTIFIED MAIL

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were incorporated your organization per your Article reads in part as follows: "... the preservation and protection of scientific, biological and natural resources, including animals". In conducting this activity, the corporation may acquire, purchase, sell, donate and lease land and water rights. The corporation will also provide education and training for individuals who are committed to the goals of the corporation, and may provide scholarships and financial assistance to students who study wildlife management, preservation, stewardship and enhancement subjects.

You requested tax exemption as a non-private foundation organization described in section 509(a)(2) of the Internal Revenue Code.

The primary purpose and mission of your organization according to your application, Form 1023, is the acquisition, redevelopment, maintenance and support of non-productive real estate for the preservation and maintenance of native habitat and indigenous wildlife. The corporation aims to protect such areas from development for residential and commercial purposes, and to preserve and restore such areas for native vegetation and wildlife species.

Also, you requested an expedited processing of the application on the basis of a pending grant in the amount of \$ [REDACTED] by [REDACTED] as [REDACTED] of [REDACTED] ([REDACTED]).

FACTS:

The organization received as gift [REDACTED] acres of land parcel in [REDACTED] and [REDACTED] acres in [REDACTED]. The general public does not have access to either land at this time. The [REDACTED] acres is rented out to [REDACTED] for [REDACTED] years at an annual rate of \$[REDACTED] per year. The organization will not provide any services or make improvements to the land. In turn, the renter is allowed to erect fencing on the boundaries of the land to raise livestock (cattle for market). Also, the renter agreed to provide birdfeed to maintain the current wildbird population. A designated caretaker maintains the other [REDACTED] acres of land.

The organization signed a promissory demand note borrowing \$[REDACTED] from [REDACTED], [REDACTED]. The term of the agreement is for equal monthly payment of the interest at the rate of [REDACTED]% annually. [REDACTED] is a private investment corporation formed by [REDACTED].

[REDACTED], an officer of the organization, loaned \$[REDACTED] to help fund and initiate start-up of the organization. There is no loan agreement. [REDACTED] donated the [REDACTED] acres land parcel in [REDACTED] along with one-half (1/2) interest in [REDACTED] and a [REDACTED] [REDACTED], a total estimated value of \$[REDACTED]. Mr. Shaw expired on [REDACTED].

The organization loaned \$[REDACTED] to [REDACTED], an officer/director of the organization. [REDACTED] purchased a mobile home that was placed on her property, [REDACTED] acres of land parcel. The term of the agreement is for equal monthly payment of the interest at the rate of [REDACTED]% annually.

Ms. Edwards states that she will donate her [REDACTED] acres of land, one-half interest in [REDACTED], and [REDACTED] to the organization when the tax exemption is obtained.

ISSUE:

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code?

LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements, an organization must establish that it is not organized or operated for the benefit of private interest, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The Supreme Court stated in Better Business Bureau v. United States, 326 U.S. 279, 66 S. CT. 112, 90 L. ED. 67 "...the presence of a single [non charitable] purpose, if substantial in nature, will destroy the exemption regardless of the number of importance of truly (charitable) purposes."

See Church of Boston V. Commissioner, (1978) 71 T.C. 102; Colorado State Chiropractic Society, (1989) 93 T.C. 487; Best Lock Corporation, (1959) 31 T.C. 1217; St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162 and Minnesota Kingsmen Chess Association Inc. v. Commissioner, T.C. Memo 1983-495; all of these court cases held that the presence of a single non-exempt purpose and a substantial non-501(c)(3) activity results in loss of exemption despite the presence of other exempt purposes.

Revenue Ruling 76-204, 1976-1 CB 152, states that preserving a natural environment by acquiring, by gift or purchase, ecologically significant undeveloped land, and either maintaining the land itself with limited public access or transferring the land to a government conservation agency by outright gift or being reimbursed by the agency for its cost, qualifies for exemption under section 501(c)(3) of the Code.

Revenue Ruling 78-384, 1978-2 CB 174, states that a nonprofit organization which owns farmland and restrict its use to farming or other uses the organization deems ecologically suitable, but is not operated for the purpose of preserving ecologically significant land and does not otherwise establish that it serves a charitable purpose, does not qualify for exemption under section 501(c)(3) of the Code; Rev. Rul. 76-204 distinguished.

ANALYSIS:

All of the preceding Code sections, Regulation sections, Revenue Rulings and court cases describe the criteria under which an organization may be exempt under section 501(c)(3) of the Internal Revenue Code. They also describe the basis for which organizations were denied exemption because they were not organized and operated exclusively for section 501(c)(3) purposes.

Under section 501(c)(3) of the Code, organizations who are not operated exclusively for one of the specified purposes of section 501(c)(3) or organizations whose sole purpose is providing private benefit to its members or individuals is not exempt under section 501(c)(3) of the Code. Your organization's activities are not exclusively educational or charitable. There are indications of private benefit for a few individuals. The pending grant of \$[REDACTED] is actually the [REDACTED] acres of land donated by [REDACTED], [REDACTED] and [REDACTED], and [REDACTED] for income tax deduction purposes when the land was not commercially viable for redevelopment. The \$[REDACTED] estimated fair market value of the land was determined by [REDACTED]. However, upon our request you provided a copy of an independent appraised valuation report, dated [REDACTED], estimating the market value at \$148,000 and the investment value at \$[REDACTED]. [REDACTED] is the owner/broker of [REDACTED].

The [REDACTED] acres of land was leased to a private entity on [REDACTED] to raise cattle for market. The lease is for [REDACTED] years with an option to renew for an additional [REDACTED] years. The lease agreement allows the renter to have livestock grazing the land and to erect livestock wire fencing on the boundaries of the rented land. Also, the renter agreed to provide birdseed to maintain the current wildbird population.

The [REDACTED] acres land parcel was turned over to designated caretakers, who were [REDACTED] and [REDACTED]. The arrangement appeared to allow both [REDACTED] and [REDACTED] to live on the land in the mobile homes donated by them.

The promissory note to [REDACTED] indicated that no payment was made by the organization until recently, [REDACTED], in the full amount of \$[REDACTED] for [REDACTED]. [REDACTED], who is a director and stockholder of the corporation, runs the [REDACTED].

~~_____~~
The organization's loan to ~~_____~~ shows receiving a payment in the amount of \$ ~~_____~~ for ~~_____~~ months of interest on ~~_____~~. Another payment was made by ~~_____~~ recently in the amount of \$ ~~_____~~ on ~~_____~~ for the period of ~~_____~~ to ~~_____~~.

These activities appeared to be private interests and more than just incidental activities. You did not operate any of the activities at arm's-length. The organization did not meet the requirements as described under section 501(c)(3) of the Code.

CONCLUSION:

To be considered for tax exempt status under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization.

It is the position of the Internal Revenue Service, based on the information submitted, that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code, inasmuch, as you are not organized and operated exclusively for any of the specified purposes within that section. You are both organized and operated exclusively for the private benefit of a few individuals.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018. Please note the instructions for signing on the reverse side of the form.

If you disagree with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination.

Section 7428(b)(2) of the Internal Revenue Code provides in part that "declaratory judgement of decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and telephone number is shown in the heading of this letter.

Sincerely your,

Steven T. Miller

Steven T. Miller
Director, Exempt Organization

Enclosures:
Form 6018
Publication 892
envelope